A.F.R.

(10)

HIGH COURT OF JUDICATURE AT BILASPUR : CHHATTISGARH

SINGLE BENCH : HON'BLE SHRI S.R. NAYAK, C.J.

WRIT PETITION NO. 2507 OF 1996.

PETITIONER	1	M/s. Woolwoth (India) Ltd. 923-924, Urla Growth Cenre, Raipur, through the Managing Director, Shri Ajay Prakash Lohia.
	2	Shri Ajay Prakash Lohia, Managing Director Woolworth (India) Ltd. Urla Growth Centre, Industrial Area, Sarora, Raipur (M.P.)
	Versus	
RESPONDENTS	1.	State of Madhya Prades through the Secretary, Commercial Tax Department, Vallabh Bhawan, Bhopal (M.P)
	2.	Commissioner of Commercial Tax, Madhya Pradesh, Indore.
	3.	Assistant Commissioner of Commercial Tax Bilaspur (M.P.)
	4.	Assistant Commissioner of Commercial Tax Raipur (M.P.)

Present : Shri Ashish Shrivastava, learned counsel for the petitioners.
Shri Yashwant Singh, learned G.A. for the respondents.

(ORAL ORDER)
(Passed on 17th July, 2006)

This writ petition is directed against the order of the Assistant Commissioner of Commercial Tax, Bilaspur, the 3rd respondent herein dated 15.03.1996.

(2) The petitioner No.1 is a Company of Uniworth Group of Companies promoted by non-resident Indians. The petitioner has established 100% export oriented units for manufacturing worsted woolen yarn at Urla Growth Centre, Raipur. The petitioner No.2 is the Managing

Director and share holder of the company. The petitioners installed their first Unit and commenced production w.e.f. 1st November, 1990. In promise of various incentives extended by the State Government in the matter of payment of tax, the petitioner-Company sought exemption from payment of Sales Tax for the period 01.11.1990 to 31.10.1999 and the same was sanctioned. Similarly, the petitioner-Company sought exemption from payment of entry tax for the period of five years from 27.08.1990 to 26.08.1995. That was also sanctioned. As per the petitioner-Company, it undertook the expansion programme of Phase-II Unit and in that regard, it obtained letter of intent from time to time from Government of India, Ministry of Industry, Department of Industrial Development, Secretariat of Industrial Approval E O U Section (Export Oriented Units), New Delhi. The commercial production of the 2nd unit started in phased manner from 1st August 1992 and 26th March 1993. The petitioner company was granted the eligibility certificate dated 16.07.1993 for exemption from payment of entry tax for the 2nd unit also but only in respect of raw materials. The petitioner submitted return of entry tax for the period 01.04.1992 to 31.03.1993. The Assessing Authority rejected the claim of the petitioner company vide order of assessment dated 15.03.1996. The assessing authority while rejecting the claim of the petitioner-Company that they are not liable to entry tax on plants and machineries worth Rs.52,75,98,436/- held that the plants and machineries purchased by the petitioner-Company are incidental goods and, therefore, they are liable for payment of entry tax in terms of Section 3(1) (b) of the Madhya Pradesh Sthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhiniyam, 1976, No.52 of 1976 (for short 'the Act") and also on the ground that they constitute capital goods.

(3) No doubt, against the impugned assessment order dated 15.03.1996, an appeal lies under Section 61 of the Chhattisgarh Vanijyik Kar Adhiniyam, 1994 and revision under Section 62 of the Chhattisgarh Vanijyik Kar Adhiniyam, 1994. However, the petitioners without exhausting statutory remedies have approached this Court under Article 226 of the Constitution straightaway on the ground that the Assessing Authority while passing the impugned assessment order dated 15.03.1996 was guided by the Circular of the Commissioner of Commercial Tax, Madhya Pradesh, Indore dated 28.04.1995 and therefore, exhausting the alternative remedies will be a futile exercise. Be that as it may, this writ petition was filed in the year 1996 and it is coming up for final hearing after a long lapse of 10 years and more. Therefore, it may not be appropriate to direct the petitioners to exhaust the alternative remedies.

(4) I have heard the learned counsel for the parties. It was contented by learned counsel for the petitioners that in terms of Circular No.16/2/84/11/V, dated 31-07-1986, the Registered Units which export 75% or more of their production would be exempted from payment of entry tax, even in respect of incidental goods and packing materials used in the production of export items and therefore, the petitioner – Company is not liable to pay entry tax. It was alternatively contended that even assuming that the plant and machinery are incidental goods, even then, by virtue of the above circular, the entry tax could not be levied on those goods. It was further contended that the plant and machinery were brought into local area not in the course of business activities, but, for the commencement of business activities and therefore, the provisions of Section 3(1) (b) of the Act have no application to the facts of the case and

the Assessing Authority acted illegally in levying entry tax on plant and machinery. It was further contended that the question whether the plant and machinery brought into the local area before commencement of production of goods, is liable to entry tax is no longer *res integra* in view of the Judgment in the case of **National Thermal Power Corporation Ltd. Sidhi Vs. Additional Commissioner of Commercial Tax, Jabalpur** [1] , inasmuch as in the said Judgment, the M.P. High Court has held that the plant and machinery entering local area before commencement of production are not liable to entry tax. Learned Govt. Advocate appearing for the State, *per contra*, would contend that the plant and machinery were brought into local area in the course of expansion of the first unit itself and since they were brought into the local area for consumption and for use as raw materials, they should be regarded as incidental goods and in terms of the provisions of Clause (b) of sub-Section (1) of Section 3 of the Act, they are liable to be taxed.

(5) Having heard the learned counsel for the parties, the only question that arises for decision is whether the Assessing Authority is justified, in the facts and circumstances of the case and having regard to established facts, in levying entry tax on plant and machinery brought into the local area by the petitioner-Company.

(6) For our purpose the relevant provisions to be noted is Section 3(1)(b). Section 3 is a charging section and deals with the incidence of tax. It reads as follows:

[(b) on the entry in the course of business of a dealer of

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1. (2001) 4 TLB 81.

goods specified in Schedule III, into each local area for consumption or use of such goods as [raw material or incidental goods] or as packing material or in the execution of works contracts but not for sale therein;]

and such tax shall be paid by every dealer liable to tax under the Sales Tax Act who has effected entry of such goods

Clause (b) of sub-Section (1) of Section 3 of the Entry Tax Act, provides for levy of entry tax on the entry in the course of business of a dealer of goods specified in Schedule III, into each local area for consumption or use of such goods as raw materials or incidental goods or as packing material. The materials placed before the Assessing Authority would clearly show that the plant and machinery were purchased by the petitioner-Company and they are brought into local area not in the course of business but well before the commencement of business of the 2nd Unit. It also needs to be noticed that the plant and machinery were not brought into local area as raw materials or incidental goods. If this is an established fact, in my considered opinion, the Judgment of M.P. High Court in the case of **National Thermal Power Corp. Ltd. Sidhi Vs. Additional Commissioner of Commercial Tax, Jabalpur** (supra[1]) squarely apply to the facts of this case. The facts of both the cases are substantially similar. In that case also, the question that fell for consideration was whether the plant and machinery purchased and brought into local area by the petitioner-Company therein were liable to entry tax. The M.P. High Court having found that the plants and machineries were purchased by the petitioner-Company and they were brought into local area before the commencement of production in the 2nd phase held that those plants and machineries were not liable to entry tax. In forming that opinion, the M.P.

High Court had taken into account the judgments in **National Fertilisers Limited and another Vs. State of Madhya Pradesh and another**[2], **Bharat Heavy Electrical Ltd., Bhopal Vs. Additional Regional Assistant Commissioner of Sales Tax and others**[3], and **Maihar Cement Vs. Commissioner of Sales Tax, Madhya Pradesh**[4], as per which the plant and machinery, if transported into local area before the commencement of production, are not liable to entry tax. I am in respectful agreement with the view taken by the M.P. High Court in the above judgment.

(7) In the result the writ petition is allowed and the impugned order is set aside. No costs.

Sd/-
Chief Justice

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2. **(1977) 106 STC 93**
3. [1999] 32 VKN 560
4. [1995] 29 VKN 185